Neutral Citation Number: [2024] EWCA Crim 347

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202400606/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 22 March 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE WALL
MRS JUSTICE DIAS KC

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
JANZEEB SAULTAN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR N HEARN appeared on behalf of the Attorney General
MR H KHATTAK appeared on behalf of the Offender

J U D G M E N T

1. LORD JUSTICE WILLIAM DAVIS: Janzeeb Saultan is now aged 22. Prior to the matters with which we are concerned he had no previous convictions.
2. On 29 November 2023 he pleaded guilty to two counts: count 1, attempted sexual communication with a child; count 2, attempting to cause a child under the age of 13 to engage in sexual activity. On 19 January 2024 in respect of count 2 he was sentenced to a period of two years' imprisonment which was suspended for two years, with a rehabilitation activity requirement of 40 days attached to that sentence. There was no separate penalty in respect of count 1.
3. His Majesty's Attorney General now applies pursuant to section 36 of the Criminal Justice Act 1988 to refer that sentence as being unduly lenient.
4. We can set out the facts relatively simply. Between November 2020 and early November 2021 the offender, then aged between 19 and 20, engaged in Facebook conversation with a person with the profile "Sophie Furnsby". This person was a fiction. The account was operated by an adult who was a member of a paedophile hunter group. The conversation was sporadic. There was one exchange in November 2020 and another in December 2020. There was then a long gap. It resumed in September 2021 with another exchange in that month and four exchanges in October 2021. Thereafter the exchanges ceased.
5. "Sophie" identified herself as a 12-year-old girl from the outset. She said she was still at school. There were five separate passages of exchanges between the offender and "Sophie". First, he asked her if she had a boyfriend, whether she was a virgin and whether she watched pornography. Second, following on from that, the offender sent "Sophie" the name of a pornographic website and a video from that website. Third, the offender requested a photo of "Sophie". The paedophile hunter group sent the offender a

photograph of a 12-year-old girl. He described that photograph as "sexy". Fourth, the offender sent more pornographic videos to "Sophie", this time showing a woman masturbating. "Sophie" asked on the Facebook conversation whether it hurt to do that. The offender told her she would enjoy it a lot. He told her to do the same as the woman on the video. "Sophie" agreed to the offender's request. This constituted the offence of attempting to cause a child to engage in sexual activity, namely masturbation. Finally, the offender incited further sexual communications. He explained that the video made his penis erect. He explained that this meant that he wanted to have sex. He asked "Sophie" if she would want to have sex and if she would want to experience it. He sent her a picture of his penis and invited her to return an image of her vagina in return.

6. At various points during these exchanges the offender told "Sophie" that she should delete the conversations so that she did not get into trouble.
7. Since all of these communications were via Facebook and the offender's ordinary profile, his identity was clear and apparent. Amongst other things, his Facebook page indicated that he dealt in car parts. The paedophile hunter group set up a meeting using the ruse that they wanted to buy some car parts. The meeting was set up for 30 January 2022, a date some little time after the last communication. When the offender turned up for the meeting he was confronted by the group. Then the police arrived and he was arrested. When interviewed he made no comment.
8. That was in January 2022. The offender was eventually charged by postal requisition in June of 2023. He was initially due to appear at the magistrates in August. For reasons for which we have no explanation, that hearing was adjourned. This was nothing to do with the offender. He first appeared at the magistrates' court on 1 November 2023. He was sent to the Crown Court for trial. He pleaded guilty at the plea and trial preparation

hearing on the date we have already identified.

9. When sentencing, the judge had a pre-sentence report. The offender gave an explanation of how he had come to commit the offences. He said that he had been at home. He was bored, particularly during periods of lockdown due to the pandemic. Sexual thoughts had dominated his thinking. He had had a friend request from "Sophie". He had responded to that. He engaged in the conversations as we have outlined. He said he had no intention to engage in physical actions with her or even to meet her. He acknowledged how he would feel if someone had behaved in a similar manner to one of his younger sisters. The report, whilst observing that there was a medium risk of re-offending and of committing a contact offence, concluded that the offender was nonetheless suitable for a community sentence. The judge also had a letter from the offender expressing his remorse. There were character references from the offender's partner, members of the local community, work colleagues and individuals the offender had mentored. The references emphasised the offender's remorse and the changes he had made to his life since late 2021.

10. When sentencing, the judge briefly rehearsed the facts. She observed that if the offence had involved a real 12-year-old victim the starting point would be one of eight years' imprisonment. That was a reference to a Category 2A offence in the guideline for the offence of causing a child under 13 to engage in sexual activity.

11. The judge explained that she considered that she was able to take a starting point at the bottom of the category range for a Category 2A offence, namely five years' imprisonment. This was because of the offender's age, his lack of maturity at the time of the offences and his lack of previous convictions. She specifically referred to the fact that someone who reaches the age of 18 does not suddenly achieve full maturity. She

reflected what was said by the then Lord Chief Justice in *Clarke and others* [2018] EWCA Crim 185 at [5]: "Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing". She then reduced the sentence by a further 12 months to reflect the fact that the victim was not a real child. In doing so she followed the guidance in *Reed* [2021] EWCA Crim 572. She next reduced the sentence by a further 18 months. That was due to the delay that had occurred in the proceedings. As we have indicated that the offender was interviewed at the end of January 2022. His first appearance at the Magistrates occurred almost two years later. In that time the offender had taken significant steps to address his offending and his life generally.

12. By that route the judge arrived at a sentence before reduction for the plea of guilty of 32 months' imprisonment. Having reduced the sentence for the plea of guilty at the plea and trial preparation hearing, the judge arrived at a sentence of two years' imprisonment. That meant that she was in a position, were she to consider it appropriate to do so, to suspend the sentence. She concluded that it was appropriate. She said this:

> "It is absolutely the lowest possible sentence given that this was persistent communication with a person you thought was 12 years old, but it seems to me that everyone will be best protected by you being given the help that you have said that you want."

13. By that she was referring to the work that would be done pursuant to the rehabilitation activity requirement. She accepted that this was the kind of case that usually involved immediate custody. She acknowledged the difficult exercise in which she was engaged when she said:

> "It is the sort of case that one always has to think carefully about but in your case in particular I have had to think very carefully

indeed."

14. The Attorney General submits, first, that the initial starting point ought to have been eight years' imprisonment. As to that there is no dispute. That was the starting point the judge used. She goes on to submit that the offender was entitled to a reduction from that starting point to reflect the matters referred to by the judge. There was also a reduction to be made to reflect the fact that "Sophie" was not a real child. The delay also was something that justified reduction in the sentence.

15. However, it is submitted that, whilst all of those factors could reasonably have led to a sentence outside the category range, namely below five years' imprisonment, the maximum reduction that properly could be achieved would be to reduce the proper sentence to four years' imprisonment before reduction for the plea of guilty. A reduction of 25 per cent credit would mean that a sentence of three years' imprisonment ought to have been imposed. By that route it is said that the sentence imposed was unduly lenient.

16. The question we have to ask is whether the sentence of two years' imprisonment was one that no reasonable judge could have imposed. The Attorney General accepts that, for a variety of reasons, a sentence below the category range was a reasonable outcome. It is accepted that 48 months before reduction for plea would have been reasonable. For the Attorney General's submission to prevail it must be demonstrable that it was unreasonable for the sentence before reduction for guilty plea to be 32 months.

17. We have no hesitation in rejecting the Attorney General's proposition. There were many reasons why the starting point of eight years in Category 2A of the relevant guideline was inappropriate as the basis for the eventual sentence before reduction for pleas of guilty. The judge had to factor in each of those reasons as she arrived at her sentence. As we have set out she did so in a clear and logical way. We do not consider that any element of the process of reduction from the starting point of eight years is open to proper

criticism. The Attorney General does not criticise any one of the various factors the judge took into account. They were all matters which justified a reduction. The extent of the reduction cannot be a strict mathematical calculation even in relation to any one element. In each instance the judge was exercising sentencing judgment as judges have to do in any case of this kind. We would have to be satisfied that the judge fell into clear error before we could interfere with that exercise of her judgment. We are not so satisfied. This was a very experienced judge. She carefully explained her reasoning at each stage of the process. The reasoning that she adopted in our judgment cannot be impugned. It cannot described as unreasonable whether at any particular point in the process or in relation to the overall outcome.

18. Once the judge had reached the final sentence of two years, which was a lenient sentence, she had to consider whether it had to be served immediately. She was obliged to apply the imposition guideline. By reference to that guideline there was a proper basis upon which to suspend the sentence. The Attorney General does not seek to argue to the contrary.

19. It follows that the sentence imposed by the judge was one that was reasonably open to her. As the then Lord Chief Justice said in *Attorney General's Reference No 4 of 1989* [1990] 1 WLR 41:

"*….it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature".* The sentence imposed by the judge was lenient. The judge recognised that. She imposed the sentence she did because determined that it met the justice of the case. We cannot

categorise the outcome as an unduly lenient sentence. In those circumstances we refuse leave.

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Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk